October 28, 2009

To Whom It May Concern:

It is our honor to fulfill your request for our recommendations for improvements in corporate financial disclosure. We consider this topic extremely important to the integrity of the capital markets and the prosperity of the United States.

Proper function of Free Markets depends on:

(1) Accuracy of reported information
(2) Transparency into financial performance and all drivers of it
(3) Accountability for any actions that do not support items (1) and (2)

Investors must rely on the information disclosed by companies when analyzing the profitability and valuation of stocks. When companies provide incomplete or inaccurate information, they misinform investors and create asymmetries of information, and the integrity of the capital markets is undermined.

Our goal is to provide helpful suggestions for improving disclosure so investors have adequate information for making informed decisions.

On the following pages, we outline areas of disclosure that, in our opinion, could use improvement. We provide examples of current disclosure practices alongside our recommendations. As you will see, New Constructs' research process often helps rectify these problem areas.

Perhaps the biggest challenge facing disclosure not included in our list of recommendations is this -- accounting data is not designed for equity analysis, but rather for debt analysis. As a result, a large and tedious amount of work must be done to translate the reported accounting results into an assessment of the economics of the business. New Constructs specializes in this translation process. We gather and analyze data from the Notes to the Financial Statements for the 3,000 companies we consider to be investment-worthy, publicly-traded equities. Data from the Notes is critical to the translation process, as over the past decade we have discovered that companies are more and more moving important data out of financial statements and into the Notes to the Financial Statements.

Feel free to contact us with any questions.

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Additional & Improved Disclosure Recommendations

I. Off-Balance Sheet Debt (Hidden Liabilities) - Operating Leases
II. Off-Balance Sheet Debt (Hidden Liabilities) - Special Purpose Entities (SPE), Variable Interest Entities (VIE) and Special Investment Vehicles (SIV)
III. Value of Outstanding Employee Stock Option (ESO) Tranches – (Hidden Liabilities)
IV. Employee Stock Option Tranche Disclosure
V. Employee Stock Option Assumptions
VI. Executive and Director Compensation Benchmarks
VII. Mis-Statements: Earnings Do Not Add Up On the Income Statement:
VIII. Mis-Statements: Balance Sheets Do Not Always Balance
IX. Fair Value Assumptions
X. Loss Reserve Assumptions
XI. Accumulated Impairment and Write-Down Summary
XII. Expanded Breakout of Discontinued Operations
XIII. Expanded Breakout of Unconsolidated Subsidiaries (Equity and Cost Method Investments)
XIV. Expanded Breakout of Segments and Subsidiaries
XV. Understating Preferred Stock
XVI. Separation of Debt used for Financial Operations and Non-Financial Operations
XVII. Restating and Amending Prior Period Financial Statements
XVIII. Gains and Losses locations on Income Statements
XIX. Disclosure of Asset Retirement Obligation (ARO) settlements
XX. Disclosure of Foreign Currency Transaction gains and losses
XXI. Derivatives
XXII. Net Periodic Benefit Expense

I. Off-Balance Sheet Debt (Hidden Liabilities) – Operating Leases

1. Current Disclosure
   a. Current accounting rules allow companies to move large chunks of debt off their balance sheets in the form of operating leases. These leases represent claims on shareholder value and must be included in debt to arrive at accurate representations of the business. 80% of Russell 3K companies use operating leases and 40% of Russell 3K companies have off-balance sheet debt larger than their reported debt. Nearly 10% of Russell 3K companies have off-balance sheet debt that is more than 5% of their market value.
   b. Examples:

Example 1:	**Example 2:**
T (AT&T) 2008 10-K	WAG (Walgreens) 2008 10K
Off-Balance Sheet Debt: $17,189,084,944	Off-Balance Sheet Debt: $21,775,068,870
Equals 12% of Market Value	Equals 60% of Market Value

2. Recommended Disclosure
   a. Companies cannot continue to hide this hidden liability from shareholders. Operating leases must be accounted for in the investor's financial statements.

II. Off-Balance Sheet Debt (Hidden Liabilities) – SPEs, VIEs and SIVs

1. Current disclosure
   a. SPEs and some VIEs are entities set up to facilitate special transactions for companies. Disclosure is extremely poor for these entities if disclosure exists at all. Often companies will simply note that the company participates in transactions with a SPE or VIE. These transactions can include securitization of assets and liabilities or similar debt manipulation arrangements.

One such arrangement is a company selling receivables to a SIV and then the SIV issuing debt with the receivables as collateral. This is known as off-balance sheet securitization because the receivables and debt associated with the SIV are not on the parent company's balance sheet. However, there is significant risk that the parent company is ultimately responsible for the debt payments if the SIV does not pay the debt off. For example, in many cases a company guarantees the debt issued by the SIV. A SIV is a special form of a SPE.

   b. Large financial companies such as JP Morgan, Legg Mason and Wells Fargo disclose a significant amount of information, however smaller financial companies and non-financial companies only mention they are involved with these entities.
2. Recommended disclosure
   a. Companies must be held accountable for their entire dealings with SPEs and VIEs. All company's financial statements need to disclose the amount of off balance sheet assets and liabilities, amount of income and expenses associated with the entities and disclose the possible risks involved. They should also disclose reasons for using SPEs and VIEs.
   b. Example of recommended disclosure - LM (Legg Mason Inc.) 2009 10-K

	For the Year Ended March 31, 2009			
	VIE Assets That the Company Does Not Consolidate	VIE Liabilities That the Company Does Not Consolidate	Equity Interests on the Consolidated Balance Sheet	Maximum Risk of Loss*
Money market funds	$ 7,548,539	$ 121,338	$ —	$ 41,500
CDOs/CLOs	5,116,004	4,786,604	—	1,566
Other sponsored investment funds	18,241,540	3,381	34,458	52,019
Total	$30,906,083	$ 4,911,323	$ 34,458	$ 95,085

	For the Year Ended March 31, 2008			
	VIE Assets That the Company Does Not Consolidate	VIE Liabilities That the Company Does Not Consolidate	Equity Interests on the Consolidated Balance Sheet	Maximum Risk of Loss*
Money market funds	$ 95,214,043	$ 1,064,722	$ —	$1,966,000
CDOs/CLOs	5,608,533	5,299,633	—	628
Other sponsored investment funds	40,771,666	1,250	42,419	61,602
Total	$141,594,242	$ 6,365,605	$ 42,419	$2,028,230

III. Value of Outstanding Employee Stock Option (ESO) - (Hidden Liabilities)

1. Current disclosure
    a. Outstanding option liabilities represent future claims to common equity. These values are not found anywhere in the filing. They must be derived based on several data points found in the notes to the financial statements. Nearly all Russell 3k companies have a material option liability. 8% of Russell 3K companies have option liabilities greater than 5% of market value and 6% of Russell 3K companies have option liabilities greater than 10% of total assets.
2. Recommended Disclosure
    a. Companies must disclose the entire value of their ESO liability. This value should be calculated using the total outstanding options, the churn rate of outstanding options and the forward-looking and historical Black-Scholes assumptions. FASB requires most of this information to be disclosed but management often omits it. Companies must be held accountable for employees' claims on the business's future cash flows represented by ESOs.

IV. Employee Stock Option Tranche Disclosure

1. Current Disclosure
    a. Most companies choose not to disclose more than one tranche of outstanding ESOs. They only disclose the total options outstanding and the weighted-average exercise price of options outstanding. A New Constructs study found that over 2005-2009, 45% of companies under New Constructs' coverage (over 3000) limited their disclosure of ESO tranches from breaking out multiple

tranches to displaying only 1 tranche. Companies hide their true ESO liability by bundling expensive and cheap options together.

2. Recommended Disclosure
    a. Companies should disclose a detailed breakdown of all ESOs outstanding. This disclosure should include the low, high and weighted average exercise prices, expected life of each tranche and the total options in each tranche. Companies need to disclose a representative number of tranches to give shareholders a realistic assumption of the ESO liability, perhaps a minimum of 10 tranches. Furthermore, companies should not bundle in-the-money options with out-of-the-money options. This is especially true for companies with high variation in exercise prices. Companies that have significant variation in exercise prices and disclose few tranches hide the true value of the ESO liability. This is also a potential way for companies to hide the impact of executive compensation.
    b. Example of decent disclosure (note that in this example, in-the-money and out-of-the-money tranches should not be bundled) – GOOG (Google) 2008 10-K

The following table summarizes additional information regarding outstanding, exercisable, and exercisable and vested stock options at December 31, 2008:

	Options Outstanding					Options Exercisable		Options Exercisable and Vested	
Range of Exercise Prices	Total Number of Shares	Unvested Options Granted and Exercised Subsequent to March 21, 2002	Number of Shares	Weighted Average Remaining Life (in years)	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price
$0.30 – $94.80	1,340,732	26,068	1,314,664	4.8	$ 19.69	1,244,880	$ 18.32	1,067,206	$ 19.65
$117.84 – $198.41	1,576,111	—	1,576,111	4.2	$ 176.66	1,505,304	$ 176.11	1,503,441	$ 176.09
$205.96 – $298.91	1,370,309	—	1,370,309	5.2	$ 274.70	1,122,558	$ 273.70	1,121,722	$ 273.68
$300.97 – $399.00	1,759,907	—	1,759,907	5.8	$ 329.97	1,255,409	$ 327.37	1,252,719	$ 327.32
$401.78 – $499.07	1,656,645	—	1,656,645	7.5	$ 450.82	738,304	$ 445.53	735,828	$ 444.56
$500.00 – $594.05	6,016,466	—	6,016,466	8.7	$ 545.51	1,294,967	$ 546.19	1,290,628	$ 546.32
$615.95 – $699.35	200,564	—	200,564	8.9	$ 655.23	40,814	$ 662.13	40,814	$ 662.13
$707.00 – $732.94	50,704	—	50,704	8.8	$ 718.20	14,330	$ 718.31	14,330	$ 718.31
$0.30 – $732.94	13,971,438	26,068	13,945,370	7.0	$ 391.40	7,216,566	$ 288.18	7,026,688	$ 295.02

V. Employee Stock Option Assumptions

1. Current Disclosure
    a. Companies are required to disclose the assumptions used for calculating the fair valuing employee stock options in the year that the options are granted: risk free rate, volatility, expected life of the option, dividend yield. There are no accounting standards that require companies to disclose the methods used to calculate those assumptions. A change in these assumptions can yield substantial changes in the value of the option expense. For example, a decrease in expected volatility from 30% to 27% could reduce estimated option value and option expense by as much as 10%. Furthermore, over the last 11 years New Constructs found that 257 filings omitted disclosing the assumptions used to calculate Fair Value of the Employee Stock Options granted that year. Companies must disclose their assumptions and the method used to arrive at those assumptions.

b. Example of current disclosure – AA (Alcoa, Inc) 10-K 2008

The fair value of each new option is estimated on the date of grant using a lattice-pricing model with the following assumptions:

	2008	2007	2006
Weighted average fair value per option	$ 6.41	$ 6.04	$ 5.98
Average risk-free interest rate	3.01-3.66%	4.75-5.16%	4.42-4.43%
Dividend yield	2.1%	2.2%	2.0%
Volatility	31-34%	22-29%	27-32%
Annual forfeiture rate	3%	3%	3%
Exercise behavior	39%	35%	23%
Life (years)	4.0	3.8	3.6

2. Recommended Disclosure
   a. Require companies to disclose all ESO assumptions for options granted during the year along with their vesting period in a tabular format in the notes. Require detailed disclosure of the methods they use to calculate the fair value assumptions (e.g. expected life and volatility). Also require companies to disclose the vesting period associated with all current outstanding options listed in the tabular format of the ESO tranche table. The weighted-average values of all assumptions used to value ESO grants should always be presented.

VI. Executive and Director Compensation Benchmarks

1. Current Disclosure
   a. Companies list their executive compensation in SEC required documentation such as proxies. This is not enough. It is difficult to examine executive compensation with no comparative benchmark. $5 million of bonuses may be deserved for a CEO whose company returns extraordinary results, but not for a CEO who manipulates accounting earnings to guarantee outlandish bonuses while simultaneously destroying shareholder capital.
2. Recommended Disclosure
   a. The addition of standard performance metrics that measure the true profitability of a business in the eyes of the shareholder can provide a comparative benchmark for executive compensation. Compensation tied to these benchmarks will align shareholder's interest with management's while at the same time providing comparability between companies. Shareholders will be able to tell which executives' compensation is out of line with competition and whether this is deserved or not.

VII. Mis-Statement: Earnings Do Not Add Up On the Income Statement

1. Current Disclosure
   a. Over the last 5 years, New Constructs found 10 Income Statements that do not add up due to issues other than rounding. Over the last 11 years New Constructs found 14 Income Statements with these issues. How can shareholders trust management's presented numbers if their income statements do not add up?
   b. Examples:

Example 1:	**Example 2:**
FAF (First American Corp) 2008 10-K	GCO (Genesco Inc) 2008 10-K
Reported Net Income: -$26,320,000	Reported Net Income: $6,885,000

Calculated Net Income: $-36,320,000	Calculated Net Income: $6,668,000
Difference: $10,000,000 or 25% of Net Income	Difference: $217,000 or 3% of Net Income

VIII. Mis-Statement: Balance Sheets Do Not Always Balance

1. Current Disclosure
   a. Over the last 11 years, New Constructs found 20 Balance Sheets that do not balance due to issues other than rounding. 11 balance sheets do not add up due to the components of assets not adding up to the total value listed. 9 balance sheets do not add up due to the components of liabilities not adding up to the total value listed. Again, how can shareholders trust management's presented numbers if their balance sheets do not balance?
   b. Example:
   SLG (SL Green Realty Corp.) 2007 10-K
   Listed total assets: $11,430,016
   Listed total liabilities & equity: $11,406,016

IX. Fair-Value Assumptions

1. Current Disclosure
   a. U.S. GAAP currently requires companies to value assets and liabilities with fair value measurements per FAS 157. They are required to distinguish assets and liabilities according to their liquidity and then value them using fair value measurements prescribed in 157. Companies however do not disclose the assumptions associated with valuing these assets and liabilities. Similar to the ESO assumptions, small changes can have huge effects and give management the ability to price balance sheet items to their whim.
2. Recommended Disclosure
   a. Companies should disclose the assumptions used in the calculation of Level 2 and Level 3 assets and liabilities since their values are determined at management's discretion.

X. Loss Reserve Assumptions

1. Current Disclosure
   a. Loss reserves are expenses charged to current earnings. They are supposed to approximate future losses and match them with today's revenues. Companies make assumptions when they calculate their loss reserves, but they do not have to disclose those assumptions. The extensive use of loss reserves by financial companies can significantly impact the financial statements and management has complete control over size of the reserves through modification of the assumptions. This is an open invitation for earnings manipulation.
2. Recommended Disclosure
   a. Companies should disclose the assumptions used to calculate their reserves. This way, shareholders can decide if assumptions made by management about the future are realistic or imaginary. Shareholders will also be able to tell if management is under-expensing future losses to provide higher current earnings.

XI. Accumulated Impairments and Write-Down Summary

1. Current Disclosure
    a. Accumulated Write-downs After-Tax represent the value of assets that management has written off over time. These values are not captured on balance sheets, though they are an important indicator of management's ability to create value. 19% of Russell 3k companies have Accumulated Write-downs After-Tax greater than 25% of Total Assets. 5% of Russell 3K companies have Accumulated Write-downs After-Tax greater than 100% of Total Assets. Companies disclose impairments on the income statement and impairments in the notes and MD&A. However, values presented on the income statement, cash flow statement and the notes are scattered all throughout the filings and should be consolidated in one location so management cannot hide them.
    b. Examples:

Example 1:	Example 2:
ARBA (Ariba Inc) 1998-2008 10-Ks	BRCM (Broadcom Corp.) 1998-2008 10-Ks
Accumulated Write-downs After-Tax: $1,714,348,000	Accumulated Write-downs After-tax: $4,154,666,848
Equals 273% of Total Assets	Equals 110% of Total Assets

2. Recommended Disclosure
    a. Companies should disclose their Accumulated Write-downs After-Tax and all current impairments and write-downs in a note to the financial statements. Shareholders can locate all impairments easily this way and management cannot hide their impairments deep in the text of the annual report.

XII. Expanded Breakout of Discontinued Operations

1. Current Disclosure
    a. Companies often do not break out the financial statements associated with discontinued operations. Instead, they choose to disclose 'selected financial information' related to discontinued operations instead of the entire balance sheet and income statement. Discontinued operations are, by definition, significant segments of a business, and shareholders need to have better disclosure of these assets in order to judge management's capital allocation decisions.
    b. Example of current poor disclosure – AA (Alcoa, Inc.) 2008 10-K

The following table details selected financial information for the businesses included within discontinued operations:

	2008	2007	2006
Sales	$1,218	$1,468	$1,946
Loss from operations	$ (199)	$ (107)	$ (109)
(Loss) gain on sale of businesses	-	(16)	176
Loss from impairment	(225)	(210)	(1)
Pretax (loss) income	(424)	(333)	66
Benefit (provision) for income taxes	121	83	(44)
(Loss) income from discontinued operations	$ (303)	$ (250)	$ 22

2. Recommended Disclosure

a. Currently, many REITs (Real Estate Investment Trusts) have excellent disclosure of discontinued operations. In the example below, ARE (Alexander Real Estate Equities Inc.) breaks out the income statement and the balance sheet for the discontinued operation. This degree of disclosure should be mandatory for all companies.
b. Example of recommended disclosure – ARE (Alexander Real Estate Equities Inc.) 2008 10-K

15. Discontinued operations

The following is a summary of operations and net assets of the properties included in discontinued operations presented in compliance with SFAS 144 (in thousands):

	Year Ended December 31,		
	2008	2007	2006
Total revenue	$ 2,316	$ 10,988	$ 17,162
Operating expenses	758	3,492	4,368
Revenue less operating expenses	1,558	7,496	12,794
Interest expense	1,185	2,261	2,284
Depreciation expense	510	2,327	3,135
Subtotal	(137)	2,908	7,375
Gain/loss on properties "held for sale" and sales of property, net	15,751	7,976	59
Income from discontinued operations, net	$ 15,614	$ 10,884	$ 7,434

	Year Ended December 31,	
	2008	2007
Properties "held for sale", net	$ 9,189	$ 30,331
Other assets	54	71
Total assets	$ 9,243	$ 30,402
Total liabilities	13,966	62
Net (liabilities) assets of discontinued operations	$ (4,723)	$ 30,340

XIII. Expanded Breakout of Unconsolidated Subsidiaries (Equity/Cost Method Investments)

1. Current Disclosure
   a. Similar to discontinued operations, companies do not break out the income statements and balance sheets of their unconsolidated subsidiaries. Instead, they use the 'equity-method' or 'cost-method' of accounting, which apportions some of the income from the subsidiary to the income statement of the parent and the total investment in the subsidiary to the balance sheet of the parent. Without the full disclosure of the operating results of the investment, investors are not able to determine the intrinsic value of the investment.
   b. Example of current disclosure – F (Ford Motor Company) 10-K 2008

Interest income and other non-operating income/(expense), net	(755)	1,161	1,478
Equity in net income/(loss) of affiliated companies	163	389	421
Income/(Loss) before income taxes — Automotive	(11,823)	(4,970)	(17,040)

2. Recommended Disclosure
   a. Companies that invest in equity/cost method investments should break out the entire income statement and balance sheet of their investment in their financial statements. They should also disclose the proportion of the interest that the company owns in that business. Without this disclosure, it is impossible for shareholders to know the true value of their equity/cost method investment. This disclosure should be similar to the recommended disclosure example noted in the discontinued operations section.

XIV. Expanded Breakout Segments and Subsidiaries

1. Current Disclosure
    a. Similar to discontinued operations, companies do not separate the financial statements of their segments and subsidiaries from their consolidated statements. They only break out the total revenue or total assets of these business segments. This is not enough disclosure. Managers would not consider making decisions about their subsidiaries without this kind of information, so it is only fair that shareholders, the owners of the business, have the same access to it.
    b. Example of current disclosure – BRKA (Berkshire Hathaway) 10-K 2008

	Revenues			Earnings (loss) before taxes and minority interests		
	2008	2007	2006	2008	2007	2006
Operating Businesses:						
Insurance group:						
Premiums earned:						
GEICO	$ 12,479	$ 11,806	$11,055	$ 916	$ 1,113	$ 1,314
General Re	6,014	6,076	6,075	342	555	526
Berkshire Hathaway Reinsurance Group	5,082	11,902	4,976	1,324	1,427	1,658
Berkshire Hathaway Primary Group	1,950	1,999	1,858	210	279	340
Investment income	4,759	4,791	4,347	4,722	4,758	4,316
Total insurance group	30,284	36,574	28,311	7,514	8,132	8,154
Finance and financial products	4,947	5,119	5,124	787	1,006	1,157
Marmon *	5,529	—	—	733	—	—
McLane Company	29,852	28,079	25,693	276	232	229
MidAmerican	13,971	12,628	10,644	2,963	1,774	1,476
Shaw Industries	5,052	5,373	5,834	205	436	594
Other businesses	25,666	25,648	21,133	2,809	3,279	2,703
	115,301	113,421	96,739	15,287	14,859	14,313
Reconciliation of segments to consolidated amount:						
Investment and derivative gains/losses	(7,461)	5,509	2,635	(7,461)	5,509	2,635
Interest expense, not allocated to segments	—	—	—	(35)	(52)	(76)
Eliminations and other	(54)	(685)	(835)	(217)	(155)	(94)
	$107,786	$118,245	$98,539	$ 7,574	$20,161	$16,778

2. Recommended Disclosure
    b. Companies should disclose the revenues and expenses associated with each subsidiary and operating segment. They should also disclose the assets and liabilities associated with each. This disclosure should be similar to the recommended disclosure example noted in the discontinued operations section.

XV. Understating Preferred Stock

1. Current Disclosure
    a. Companies underreport the Preferred Stock on their balance sheets. They do this by bundling the most of cost of the Preferred Stock with the Common Equity in the paid-in-capital account. The paid-in-capital accounted presented is the sum of preferred and common paid-in-capital. Understating preferred is misleading because it makes the value of common equity appear larger than it is.
    b. Example 1:
    ELTP (Elite Pharmaceuticals) 2008 10-K

Reported Preferred Stock: $276
Actual Value of Preferred Stock: $28,792,669
Difference in value is 188% of Total Assets

STOCKHOLDERS' EQUITY:		
Preferred stock - $.01 par value;		
Authorized - 4,483,442 (originally 5,000,000 shares of which 516,558 shares of Series A Convertible Preferred Stock were retired) and 0 shares outstanding as of March 31, 2009 and 2008, respectively	—	—
Authorized - 10,000 Convertible Series B Preferred Stock - issued and outstanding – 1,046 shares and 8,410 shares, respectively	11	84
Authorized 20,000 Series C Convertible Preferred Stock - issued and outstanding – 13,705 and 19,155 shares, respectively	137	192
Authorized 30,000 Series D Convertible Preferred Stock - issued and outstanding – 9,154 shares at March 31, 2009	91	—
Common Stock - $.01 par value;		
Authorized – 210,000,000 as of March 31, 2009 and 150,000,000 shares at March 31, 2008 Issued and outstanding – 60,839,374 and 23,131,035 shares in 2009 and 2008, respectively	608,394	231,310
Additional paid-in capital	95,718,082	91,889,978
Accumulated deficit	(90,001,793)	(81,190,402)

c. Example 2:
EPEX (Edge Petroleum) 2008 10-K
Reported Preferred Stock: $29,000
Actual Value of Preferred Stock: $143,750,000
Difference in value is 40% of Total Assets

STOCKHOLDERS' EQUITY		
Preferred stock, $0.01 par value; 5,000,000 shares authorized; 2,875,000 issued and outstanding at December 31, 2008 and 2007	29	29
Common stock, $0.01 par value; 60,000,000 shares authorized; 28,833,546 and 28,544,160 shares issued and outstanding at December 31, 2008 and 2007, respectively	288	285
Additional paid-in capital	423,951	421,808
Retained earnings (deficit)	(326,780)	12,654
Total stockholders' equity	97,488	434,776
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$ 357,597	$774,505

2. Recommended Disclosure
   a. The paid-in-capital allocated to all classes of stock should be broken out. This disclosure allows common shareholders to determine the preferred shareholders' senior stake in the company.

XVI. Separation of Debt for Financial Operations and Non-Financial Operations

1. Current Disclosure
   a. Currently REITs that have both the mortgage lending operations and real estate investment operations are not required to disclose the amount of debt that is related to each side of their operations. Other non-financial companies that have financing arms, such as GE, break out the portions of debt belonging to their non-financial operations from the debt associated with their financial operations.

2. Recommended Disclosure
    a. All companies that have both financial and non-financial operations should disclose the monetary assets and liabilities related to their financial and non-financial operations as a breakout in the notes
    b. Example of recommended disclosure – GE (General Electric Co.) 10-K 2008

NOTE 18. BORROWINGS

Short-term Borrowings

December 31 (Dollars in millions)	2008 Amount	2008 Average rate(a)
GE		
Commercial paper		
U.S.	$ –	–%
Non-U.S.	1	7.82
Payable to banks	78	2.91
Current portion of long-term debt	1,703	0.84
Other	593	
	2,375	
GECS		
Commercial paper		
U.S.		
Unsecured(b)	62,768	2.12
Asset-backed(c)	3,652	2.57
Non-U.S.	9,033	4.12
Current portion of long-term debt(d)	69,682	3.83
Bank deposits(e)(f)	29,634	3.47
Bank borrowings(g)	10,028	2.75
GE Interest Plus notes(h)	5,633	3.58
Other	3,103	
	193,533	
Eliminations	(2,213)	
Total	$ 193,695	

XVII. Restating and Amending Prior Period Financial Statements

1. Current Disclosure
    a. When companies discover an error in the financial statements of a prior period those previous statements are restated either by issuing a 10-K/A for the prior period or restating the results of prior periods in a subsequent 10-K.
2. Recommended Disclosure
    a. When companies discover a material error in the financial statements of a prior period, the company should do two things: issue a 10-K/A for each year that contains the material error and restate the prior period statements in the subsequently filed 10-K. This process ensures that investors who review prior period financial statements will have full assurance that the information is free of material errors.

XVIII. Gains and Losses locations on Income Statements

1. Current Disclosure
    a. Currently companies disclose gains and losses on assets on the cash flow statement. This disclosure is helpful in allowing shareholders to remove non-operating results when forecasting operating cash flows. However, the current disclosure is insufficient in that the location of these gains and losses on the income statement is not provided. This disclosure prevents shareholders from developing accurate models of companies' underlying economics.

b. Example of current disclosure on the cash flow statement. The annual filing mentions this '(Gain) loss on sale of property plant and equipment' only in this location - BMS 10-K 2008

For the years ended December 31,		2008
Cash flows from operating activities:		
Net income	$	166,214
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization		162,004
Minority interest in net income		6,011
Excess tax benefit from share-based payment arrangements		(209)
Share-based compensation		18,058
Deferred income taxes		15,666
Income of unconsolidated affiliated companies		(919)
(Gain) loss on sale of property and equipment		967
Non-cash restructuring related activities		
Changes in operating assets and liabilities, net of acquisitions:		
Accounts receivable		(25,015)
Inventories		8,584
Prepaid expenses		(20,607)
Accounts payable		(26,717)
Accrued salaries and wages		(3,222)
Accrued income taxes		616
Accrued other taxes		349
Changes in other liabilities and deferred credits		(12,341)
Changes in deferred charges and other assets		4,111
Net cash provided by operating activities		293,550

2. Recommended Disclosure
   c. Companies need to disclose the location of gains and losses on the income statement so shareholders can make proper adjustments. Shareholders do not want non-recurring, non-operating income and expenses reflected in the operating results of the company.
   d. Example of recommended disclosure – OZRK (Bank of the Ozarks, Inc) 10-K 2009

Non-Interest Income

	Year Ended December 31,		
	2008	2007	2006
	(Dollars in thousands)		
Service charges on deposit accounts	$12,007	$12,193	$10,217
Mortgage lending income	2,215	2,668	2,918
Trust income	2,595	2,223	1,947
Bank owned life insurance income	4,131	1,919	1,832
Appraisal, credit life commissions and other credit related fees	456	498	521
Safe deposit box rental, operating lease income, brokerage fees and other miscellaneous fees	1,218	1,160	1,125
(Losses) gains on investment securities	(3,433)	520	3,917
(Losses) gains on sales of other assets	(544)	487	(90)
Other	704	1,307	844
Total non-interest income	$19,349	$22,975	$23,231

XIX. Disclosure of Asset Retirement Obligation (ARO) settlements

1. Current Disclosure
   a. Companies rarely break out the loss or gain on settlement of asset retirement obligations. A loss on settlement of asset retirement obligation means that the company incorrectly estimated the total cost of retiring an asset and paid more

cash than expected to settle. This breakout is rarely disclosed. Instead companies disclose only the total settlement paid.

b. Example of current disclosure – APA (Apache Corp.) 10-K 2008

The following table is a reconciliation of the asset retirement obligation liability:

	2008	2007
	(In thousands)	
Asset retirement obligation at beginning of year	$1,866,686	$1,747,566
Liabilities incurred	343,210	243,284
Liabilities settled	(587,246)	(480,655)
Accretion expense	101,348	96,438
Revisions in estimated liabilities	170,686	260,053
Asset retirement obligation at end of year	1,894,684	1,866,686
Less current portion	339,155	309,777
Asset retirement obligation, long-term	$1,555,529	$1,556,909

The majority of Apache's asset retirement obligations (ARO) relate to plugging, abandonment and restoration of oil and gas properties. An abandonment liability is initially recorded in the period the related assets are placed in service, with an offsetting increase to properties and equipment. The liabilities incurred are recorded at fair value, and accretion expense is recognized over the life of the related assets, increasing the liability to its expected settlement value. Liabilities settled relate to individual properties plugged and abandoned or sold during the period and include the continued abandonment activity of platforms lost during Hurricanes Katrina, Rita and Ike. Revisions in estimated liabilities during the period primarily related to escalating retirement costs, changes in property lives and the expected timing of settling asset retirement obligations.

2. Recommended Disclosure
   a. Companies should disclose any loss or gain associated with settling asset retirement obligations. It seems very unlikely that companies correctly estimate the total costs of these liabilities. Shareholders need access to this information to hold management responsible for misuse of company capital. Only a few companies are willing to come forward and disclose their inaccurate estimates like ATPG.
   b. Example of recommended disclosure – ATPG (ATP Oil & Gas Corp.) 10-K

Asset Retirement Obligation

We recognize liabilities associated with the eventual retirement of tangible long-lived assets, upon the acquisition, construction and development of the assets. We record the fair value of a liability for an asset retirement obligation in the period in which it is incurred and a corresponding increase in the carrying amount of the related long-lived asset. Changes in estimates on fully depleted properties are charged directly to loss on abandonment.

Loss on Abandonment

We recognized aggregate loss on abandonment during 2008, 2007 and 2006 of $13.3 million, $18.6 million and $9.6 million, respectively. The losses were the result of actual abandonment costs exceeding the previously accrued estimates, due to unforeseen circumstances that required additional work or the use of equipment more expensive than anticipated, and unanticipated vendor price increases.

XX. Disclosure of Foreign Currency Transaction Gains and Losses

1. Current Disclosure
   a. According to SFAS 52, companies have complete discretion of where to report foreign currency transaction gains and losses. The disclosure of these gains and losses is materially inconsistent across companies. This poor disclosure meaningfully affects shareholder value analysis.
2. Recommended Disclosure

a. Companies need to disclose this information in a uniform manner in order to make companies comparable to one another. The withholding of this information and lack of reporting structure clouds the transparency of financial statements from shareholders.

XXI. Derivatives

1. Current Disclosure
   a. Accounting standards require companies to disclose the location of derivative gains/losses in the notes of the financial statements as well as the location of derivative assets and liabilities on the balance sheet. However, the standards lend no guidance as to where companies should classify gains/losses on derivatives within the income statement.
      i. The only resemblance of guidance for where to classify gains/losses comes in FAS 161 where the FASB presents a tabular layout of derivatives disclosure. The major types of derivatives are presented with the line item the gains/losses of that derivative should be included in, but paragraph 205(G) states that the tabular examples are only for illustrative purposes and companies should exercise judgment in their disclosure, otherwise FAS 133 requires the gains/losses on derivatives to be disclosed in the current period's earnings.
   b. Example of current disclosure – CSCO (Cisco Systems, Inc.) 10-K 2009

	GAINS (LOSSES) RECOGNIZED IN OCI ON DERIVATIVES (EFFECTIVE PORTION)	GAINS (LOSSES) RECLASSIFIED FROM AOCI INTO INCOME (EFFECTIVE PORTION)		GAINS (LOSSES) RECOGNIZED IN INCOME (INEFFECTIVE PORTION)(1)	
Derivatives Designated as Cash Flow Hedging Instruments	Amount	Line Item in Statements of Operations	Amount	Line Item in Statements of Operations	Amount
Foreign currency derivatives	$ (116)	Operating expenses	$ (95)	Other income (loss), net	$ —
		Cost of sales-service	(13)		
Interest rate derivatives	(42)	Interest income (expense), net	—	Interest income (expense), net	(4)
Other derivatives	(2)	Operating expenses	(2)	Other income (loss), net	—
Total	$ (160)		$ (110)		$ (4)

Derivatives not Designated as Hedging Instruments	Line Item in Statements of Operations	Gains (Losses)
Foreign currency derivatives	Other income (loss), net	$ 1
Equity derivatives	Operating expenses	(14)
Equity derivatives	Other income (loss), net	11
Total		$ (2)

      i. Note that foreign currency derivatives are included in both operating income and in other non-operating income. Derivatives designated as cash flow hedges are included as a component of operating expenses and cost of sales, while derivatives not designated as hedging instruments are included as a component of other income (loss), net. A user of financial statements does not know the purpose of foreign currency derivatives not designated as hedging instruments as compared to the purpose of derivatives designated as cash flow hedges, and the user does not know whether the derivatives designated as cash flow hedges are included in operating expenses because they are related to operating expenses or if they are included in operating expenses only because they are classified as a cash flow hedge.

2. Recommended Disclosure
   a. Accounting standards should require companies to separate the gains/losses on derivatives into two groups (1) those relating to the primary operations of the business, and (2) all other derivatives. The gains/losses from derivatives related to the primary operations of the business should be included in operating income, and the gains/losses from all other derivatives should be included in other non-operating income.

XXII. Net Periodic Benefit Expense

3. Current Disclosure
   a. Companies that maintain defined benefit pension plans incur annual costs expensed in the income statement. Current accounting disclosure requires companies to break out all the components of the expense (e.g. service cost, interest cost, expected return on plan assets) in the notes, but on the income statement all the component costs are summed together into a net periodic benefit expense and added to an operating expense line item.
   b. Example of current disclosure – CAT (Caterpillar Inc.) 10-K 2008

Net periodic cost

(Millions of dollars)	U.S. Pension Benefits 2008	2007	2006
Components of net periodic benefit cost:			
Service cost	$ 199	$ 187	$ 180
Interest cost	629	595	575
Expected return on plan assets	(882)	(841)	(798)
Termination benefits	—	—	—
Amortization of:			
Net asset existing at adoption of SFAS 87/106	—	—	—
Prior service cost/(credit) [1]	32	58	58
Net actuarial loss	134	214	232
Adjustment for subsidiary pension plan [2]	—	44	—
Total cost included in operating profit	$ 112	$ 257	$ 227

Note that the total net periodic cost is included on the income statement is included in operating profit, but no there is no indication in the 10-K as to where (e.g. what line item) it is located.

4. Recommended Disclosure
   c. At the very minimum, require companies to disclose where they disclose net periodic benefit expense. A more appropriate requirement is to mandate that companies break out the components of net periodic benefit expense and consolidate the components among their more appropriate locations (e.g. consolidate interest expense of net periodic benefit expense into interest income/expense on the income statement).